January 29, 2004

VIA EMAIL

Ms. Jennifer J. Johnson
Secretary, Board of Governors
Federal Reserve System
20th and Constitution Avenue NW
Washington, DC 20551
reg.comments@federalreserve.gov

RE: Docket No. R-1167-Regulation Z
Docket No. R-1168-Regulation B
Docket No. R-1169-Regulation E
Docket No. R-1170-Regulation M
Docket No. R-1171-Regulation DD

Dear Ms. Johnson:

Guaranty Bank is a $2 billion asset federal savings bank headquartered in the Milwaukee Wisconsin area, but with locations throughout southeast Wisconsin, Northern Illinois, metropolitan Detroit Michigan and Minneapolis Minnesota. Our home mortgage lending operations operate throughout the country, last year originating over $11 billion in home mortgage loans. We appreciate the opportunity to comment on the proposed regulations issued by the Board of Governors of the Federal Reserve System (FRB) regarding consumer disclosures under Regulations Z, B, E, M and DD (regulations).

The proposals would adopt language from Regulation P regarding the "clear and conspicuous" standard currently contained in the disclosure requirements of the regulations in order to create a universal definition of this standard. As a result, "clear and conspicuous" would mean "a disclosure that is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure." In addition, the proposals would adopt commentary from Regulation P that attempts to illustrate what is meant by "reasonably understandable" and "designed to call attention," including a discussion of type-size used in disclosures.

For the reasons detailed below, we are vehemently opposed to any changes to the current "clear and conspicuous" standards contained in each of these regulations.

Recently Enacted or Proposed Regulations For Substantive Matters Already Impose a Heavy Compliance Burden.

Frankly, we are astonished and somewhat overwhelmed by the pace and burden of the numerous regulatory changes that institutions have had to deal with in recent days. Aside from the obvious recent additions such as the Patriot Act, HMDA changes (our people had to work on New Year's Eve to ensure our systems performed correctly) and now FCRA (FACT Act), we are also facing huge compliance issues from the states in the predatory lending arena and the securities regulators on corporate governance issues among others. RESPA reform (now sitting at OMB for approval) would pose another monumental business and compliance burden for our institution that we could do without. These compliance burdens are far reaching and require careful consideration of numerous aspects of our business and systems. Tremendous amounts of time and effort go into our compliance function with these new laws and regulations and we continue to work hard to keep up with the new additions. To have to deal with an entirely non-substantive regulation such as this one at this time is quite frustrating given the amount of work that will need to go into reviewing and revising forms to ensure compliance. Simply put, the regulatory burden is overwhelming and there does not seem to be any recognition on the part of those creating more regulations of the costs institutions must face to comply. In the end, the added costs these regulations impose get passed on to consumers, so regulators should be careful to only impose regulations that, in the end, provide real value to the banking public.

The Proposed Changes To The "Clear And Conspicuous" Standards Are Exceedingly Subjective And Would Invite Costly Litigation.

If adopted, the proposals would muddy the current tried and true "clear and conspicuous" standards with terminology that is subjective, such as "legal and highly technical business terminology," "explanations that are imprecise," and "use of everyday words." Use of subjective terminology to describe the requirements of these standards would leave the requirements open to an enormous degree of interpretation, rather than making the standards clearer. When terms are left open to interpretation, loss of certainty occurs and, with that, litigation abounds. Plaintiff's attorneys would have a field day using the new subjective standard to challenge any disclosure. The resulting litigation at every possible turn would be very expensive and time consuming. The only group that would benefit would be the plaintiff's bar. Consumers certainly would not benefit as they would be less likely to understand the new and unfamiliar disclosures, and financial institutions required to provide the disclosures would face huge legal fees to defend their disclosures. The costs to defend these lawsuits would eventually be reflected in increased costs to consumers for products and services. We absolutely

believe that the proposed changes are not warranted, and implore the FRB to leave the current standards completely unchanged.

The Proposed Changes To The "Clear And Conspicuous" Standards Would Impose Expensive And Undue Regulatory Burden.

Along with the costs associated with inevitable litigation, the proposed changes to the current standards would impose huge costs and regulatory burdens on financial institutions resulting from a multi-step process to produce new disclosures. First, every financial institution would have to review each and every document to identify all documents that contain disclosures covered by the regulations. Considering the sheer number of forms used to comply with these regulations, this task alone would be very costly and cumbersome. Then, each institution would need to review each of the identified documents to determine whether or not it complies with the new standard. This task would be incredibly expensive and cumbersome given the subjective nature of the proposals. Next, each institution would need to revise each document that does not appear to comply with the new subjective standard. Again, the subjective nature of the requirements will make this task extremely expensive and cumbersome.

In addition, even if the documents otherwise appear to comply with these subjective requirements, some documents will have to be re-created solely to comply with the type-size provisions contained in the rule. While the FRB states that the proposal does not impose a strict type-size requirement, it sets forth a safe harbor at 12-point type. If institutions wished to take advantage of the safe harbor, many documents would have to be re-created for this purpose alone. This would not only be expensive and burdensome for institutions, it would also create additional costs to consumers for the production of new disclosures, not to mention the burden of reading a longer document (if they would read it at all). Furthermore, in some cases institutions would not have the ability to control the type-size contained in disclosures. This would be particularly true where the consumer has agreed to receive disclosures electronically. In those cases, consumers control the type-size and other document parameters through their computer and printing equipment. Institutions cannot and should not be held accountable for actions beyond their control. Moreover, institutions should not be shouldered with the unnecessary financial and operational burdens imposed by the proposal. Therefore, we emphatically oppose any change to the current standards.

There Is No Evidence That The Current Definitions Of "Clear And Conspicuous" Have Caused Confusion Or Problems.

The FRB has provided no evidence that the current regulations have caused confusion or problems. The current standards have been in place for numerous years, and we have

not experienced confusion or problems in creating compliant disclosures under these standards. In addition, consumers have received disclosures produced under the current standards for the same number of years, and we are unaware of any consumer confusion or problems in that regard. We do not believe that there is a problem with the current standards. The FRB has provided no examples or explanation of when the current standards have caused confusion or problems with disclosures. Absent evidence of a problem this is a "make work" assignment whose timing could not be worse given all of the other substantive compliance issues we are dealing with. Thus, we strenuously urge the FRB to retain the current "clear and conspicuous" standards without change.

The Proposed Changes May Create Confusion And Be Less Helpful To Consumers.

As indicated earlier, consumers have received disclosures produced pursuant to the current standards for numerous years. Consumers are familiar with these disclosures. If the proposed changes were adopted, consumers would be left with disclosures that are no longer familiar. Doing so could *cause* confusion. Furthermore, if the proposals were adopted, disclosures would likely become significantly longer which could necessitate segregation of this information from other information that would normally make the disclosures more meaningful to consumers. Moreover, consumers may be less likely to review lengthier disclosures. In addition, longer disclosures would increase compliance and production costs. Consumers would ultimately shoulder these costs. These results are simply not helpful to consumers. If one of the FRB's goals is to help consumers, we fail to see how that goal is achieved by changing the standards with which consumers are accustomed and familiar.

Conclusion.

We request that the FRB takes these comments into serious consideration on this important matter. If after very careful deliberation, the FRB adopts the proposed changes, we strongly urge the FRB to provide at least a 24-month period before the changes would be effective, and an additional timeframe before compliance would be mandatory. However, the FRB must understand that we adamantly believe that the current "clear and conspicuous' standards contained in Regulations Z, B, E, M and DD have and will continue to effectively served the purpose of communicating important information to consumers. The FRB has given no evidence to suggest otherwise, and we have not been made aware of any consumer complaints based upon claims that the current standards are lacking. In fact, we are confident that consumers are accustomed to and familiar with disclosures produced under the current standards. There is simply no convincing argument or evidence to suggest that there is something wrong or lacking in the current standards. Therefore, there is absolutely no reason to begin tampering

with the standards. For all the reasons identified above, we vehemently oppose any change to the current "clear and conspicuous" standards.

Sincerely,

Brian S. Levy
Senior Vice-President and General Counsel
Guaranty Bank
4000 W. Brown Deer Road,
Brown Deer WI 53209